

Essential Considerations for PPMP Domestic Violence Protocols in Child Protection Cases

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This document is a work-in-progress. Consult the Office of Dispute Resolution for updated versions.

Introduction

Domestic Violence is complex and potentially dangerous. For this reason, there is a presumption against mediating PPMP* cases involving domestic violence when the perpetrator is a party to the child protection case.

Minimally, each of the following points should be considered and addressed in all PPMP Domestic Violence Protocols. These points alone should not be a center's protocol, but require further development by the center in consultation with its PPMP steering committee, local Family Division, local Domestic Violence resources, the center's board of directors, etc. These considerations might also be useful for developing a Domestic Violence policy for any case, not just PPMP. It should always be remembered that just as the fact of whether child abuse/neglect occurred is not a mediatable issue, nor is the fact of Domestic Violence between adults. Also, in both situations, agreements should never involve that a cessation of violence is dependent upon the behavior of the survivor, whether child or adult.

A center's protocol must also refer to the Check-list for Screening PPMP Cases for Domestic Violence in the PPMP Intake Manual, and the section on Domestic Violence in the PPMP Mediator Manual. [See Appendix G-H.]

Essential Considerations to Address in Protocols Generally

- Screening processes at intake are necessary to determine whether Domestic Violence is an issue in the case (See the Check-list for Screening PPMP Cases for Domestic Violence in the PPMP Intake Manual). [The Check-list is reproduced at Appendix G.] A clear process, which indicates who is responsible for what aspects of screening, needs to be developed in consultation with the court, FIA, local Domestic Violence experts, etc.
- While it may be appropriate to amend PPOs for the purposes of parties attending mediation in neighborhood and related types of disputes, it would almost never be appropriate to ask the court to amend a PPO and/or No Contact Order (NCO), stemming from a Domestic Violence situation. A center should not encourage any parties to seek an amendment to a PPO/NCO that involves domestic violence.

* "PPMP" and "PPMP Centers" refer to permanency planning mediation programs that serve in child protection cases. See Section 6.5 for discussion of some important differences between mediation in child protection and domestic relations cases.

- There should be a presumption against mediation in cases involving Domestic Violence between parents **where the perpetrator is a party in the child protection case**. If the perpetrator of the Domestic Violence is not a party to the mediation/child protection case (i.e. he/she is not the father/mother of the children but a current sexual partner) then mediation may still be appropriate because the perpetrator would not be invited to nor informed about the mediation. However, the mediation agreement may still be affected by the existence of the Domestic Violence i.e. others at the table may insist that returning the children or other parts of the agreement are dependent upon the victim severing the relationship with the abusive person, seeking counseling, etc.
- The presumption against mediating PPMP cases involving Domestic Violence is based on the potential danger of such cases. Even special safety precautions such as separate arrival and departure times may not be enough to protect the survivor. Further, the impact of the Domestic Violence may have an effect on the ability of the survivor to participate fully and fairly in mediation due to concerns about her safety.
- PPMP centers and referral sources should have strong reasons for wanting to pursue mediation in such cases and a high degree of confidence that safe conditions can be created if they decide that such a case should be mediated. A consideration for pursuing mediation should be that the survivor, his/her attorney and support persons (i.e. domestic violence advocate, therapist, etc.) are in favor of mediation and will assist with determining the conditions needed to keep the situation safe.
- PPMP centers will need to establish a process with their local Family Division on how to proceed when a case has been ordered to mediation but the center then discovers that Domestic Violence is an issue (i.e. the court may not have known about the Domestic Violence prior to the order for mediation). This process should not violate participants confidentiality but must allow a center to not accept an ordered case for mediation when mediation may be inappropriate.

Essential Considerations to Address in Protocols Re: Screening for Domestic Violence

Please also refer to the **Check-list for Screening PPMP Cases for Domestic Violence in the PPMP Intake Manual**. [The Check-list is reproduced at Appendix G.] Screening for Domestic Violence should take place at two levels:

- 1) **At intake:** To determine if Domestic Violence is an issue in the child protection case, PPMP intake workers need to ask all appropriate parties involved with the case whether Domestic Violence is an issue in the case and if so, if the perpetrator is still involved in the case and would need to be at the mediation. The intake worker's initial step would be to screen the CASE (not conduct an in-depth screening of the individual parent parties) for Domestic Violence. Such screening of the case can be aided by the **Checklist for Screening PPMP Cases for Domestic Violence in the PPMP Intake Manual**.

Keeping in mind the presumption against mediating Domestic Violence cases, if the screening of the case indicates that Domestic Violence is present, and the perpetrator is involved in the case and would need to be at the mediation, there must be a strong reason for pursuing mediation (such as that the survivor, his/her attorney and support persons are in favor of it) and a high degree of confidence that safe conditions can be provided during mediation. When Domestic Violence has been identified during the case screening, but the parties (including the survivor) express an interest in mediation as a means of attempting to resolve the case, the intake worker should arrange (the intake worker may

conduct the screening if deemed qualified, i.e. the intake worker has prior experience with domestic violence issues) for an in-person screening of the perpetrator and the survivor, to be conducted by the person designated to do so in consultation with the PPMP steering committee.

The purpose of the screening is to determine whether mediation is appropriate and whether mediation may be reasonably undertaken in a safe and equitable manner. After the individual screening interviews take place, the intake worker, in consultation with other appropriate parties, must then make a decision about whether the case is appropriate for mediation, keeping in mind the presumption against mediating such cases.

- If Domestic Violence is strongly suspected by parties involved with the case but there is no admission by either the alleged victim or perpetrator during screening, this could present grounds for not accepting the case for mediation. If the alleged victim is not admitting to the problem, there is much more chance of her/him being intimidated during a session which includes the perpetrator and therefore not have the ability to enter an agreement uncoerced.
- 2) **During the mediation session:** In all PPMP cases, mediators should be sensitive to the signs of intimidation due to Domestic Violence should Domestic Violence have gone undetected through the intake process. Mediators need to feel free to stop the mediation process at any time that they believe that the session is no longer safe and/or that one or more parties is intimidated, and take any appropriate action, including the summoning of law enforcement officers, in order to keep the situation safe (See also the Section on Domestic Violence in the PPMP Mediator Manual). [Reproduced at Appendix H.]

Essential Considerations to Address in Protocols Re: When Mediation is Deemed Appropriate

- 1) In the rare case that mediation is deemed appropriate when the perpetrator is a party to the child protection case and is a necessary participant in mediation, some conditions that can help to insure safety include those listed below. What precautions are taken should be decided in close consultation with the survivor, the survivor's attorney, and the survivor's support person/Domestic Violence advocate.
 - Separate sessions with the mediator(s) so that the survivor does not have to be in the same room with the perpetrator.
 - Not informing the perpetrator of the survivor's arrival and departure times; different locations for sessions with the mediator; holding mediation in a building with security, such as the courthouse; providing an escort to and from the parking lot or public transportation.
 - Giving the survivor the opportunity to bring a support person, such as an advocate from the local Domestic Violence shelter, in addition to the survivor's attorney; the support person should be someone of the survivor's choice and no special qualifications for the support person should be required.
- 2) Mediators need to be informed about what was learned about the Domestic Violence during intake and what conditions have been set up for the mediation to insure safety in any mediation where both a survivor and a perpetrator of Domestic Violence will participate.
- 3) Other exceptions to confidentiality may need to be added to the mediator's opening statement and to the agreement to mediate, i.e. such as that any threats of harm to others will be reported both to the person threatened and to authorities.
- 4) Mediators will need to continually check-in with the survivor in caucus to make sure she/he is not feeling intimidated. See also the Section on Domestic Violence in the PPMP Mediator Manual. [Reproduced at Appendix H.]

